

**ASSEMBLY BILL**

**No. 88**

**Introduced by Assembly Member Koretz**

January 6, 2005

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An act to amend Section 12280 of the Penal Code, relating to assault weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 88, as introduced, Koretz. Assault Weapons.

Existing law provides penalties for violations of specified provisions involving assault weapons and .50 BMG rifles, as specified.

This bill would provide that with regard to specified prohibited conduct, there would be a separate and distinct offense for each assault weapon, .50 BMG rifle, or frame or receiver.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12280 of the Penal Code is amended to  
2 read:

1 12280. (a) (1) Any person who, within this state,  
2 manufactures or causes to be manufactured, distributes,  
3 transports, or imports into the state, keeps for sale, or offers or  
4 exposes for sale, or who gives or lends any assault weapon or any  
5 .50 BMG rifle, except as provided by this chapter, is guilty of a  
6 felony, and upon conviction shall be punished by imprisonment  
7 in the state prison for four, six, or eight years.

8 (2) In addition and consecutive to the punishment imposed  
9 under paragraph (1), any person who transfers, lends, sells, or  
10 gives any assault weapon or any .50 BMG rifle to a minor in  
11 violation of paragraph (1) shall receive an enhancement of one  
12 year.

13 *(3) For purposes of this section, if more than one assault*  
14 *weapon or .50 BMG rifle or the frame or receiver of the same is*  
15 *involved in any violation of this section, there shall be a distinct*  
16 *and separate offense for each.*

17 (b) Any person who, within this state, possesses any assault  
18 weapon, except as provided in this chapter, is punishable by  
19 imprisonment in a county jail for a period not exceeding one  
20 year, or by imprisonment in the state prison. However, a first  
21 violation of these provisions is punishable by a fine not  
22 exceeding five hundred dollars (\$500), if the person was found in  
23 possession of no more than two firearms in compliance with  
24 subdivision (c) of Section 12285 and the person meets all of the  
25 following conditions:

26 (1) The person proves that he or she lawfully possessed the  
27 assault weapon prior to the date it was defined an assault weapon  
28 pursuant to Section 12276, 12276.1, or 12276.5.

29 (2) The person has not previously been convicted of a  
30 violation of this section.

31 (3) The person was found to be in possession of the assault  
32 weapon within one year following the end of the one-year  
33 registration period established pursuant to subdivision (a) of  
34 Section 12285.

35 (4) The person relinquished the firearm pursuant to Section  
36 12288, in which case the assault weapon shall be destroyed  
37 pursuant to Section 12028.

38 (c) Any person who, within this state, possesses any .50 BMG  
39 rifle, except as provided in this chapter, is punishable by a fine of  
40 one thousand dollars (\$1,000), imprisonment in a county jail for

1 a period not to exceed one year, or by both that fine and  
2 imprisonment. However, a first violation of these provisions is  
3 punishable by a fine not exceeding five hundred dollars (\$500), if  
4 the person was found in possession of no more than two firearms  
5 in compliance with subdivision (a) of Section 12285 and the  
6 person meets the conditions set forth in paragraphs (1), (2), and  
7 (3):

8 (1) The person proves that he or she lawfully possessed the .50  
9 BMG rifle prior to January 1, 2005.

10 (2) The person has not previously been convicted of a  
11 violation of this section.

12 (3) The person was found to be in possession of the .50 BMG  
13 rifle within one year following the end of the .50 BMG rifle  
14 registration period established pursuant to subdivision (a) of  
15 Section 12285.

16 (4) Firearms seized pursuant to this subdivision from persons  
17 who meet all of the conditions set forth in paragraphs (1), (2),  
18 and (3) shall be returned unless the court finds in the interest of  
19 public safety, after notice and hearing, that the .50 BMG rifle  
20 should be destroyed pursuant to Section 12028. Firearms seized  
21 from persons who do not meet the conditions set forth in  
22 paragraphs (1), (2), and (3) shall be destroyed pursuant to Section  
23 12028.

24 (d) Notwithstanding Section 654 or any other provision of law,  
25 any person who commits another crime while violating this  
26 section may receive an additional, consecutive punishment of one  
27 year for violating this section in addition and consecutive to the  
28 punishment, including enhancements, which is prescribed for the  
29 other crime.

30 (e) Subdivisions (a), (b), and (c) shall not apply to the sale to,  
31 purchase by, importation of, or possession of assault weapons or  
32 a .50 BMG rifle by the Department of Justice, police  
33 departments, sheriffs' offices, marshals' offices, the Youth and  
34 Adult Corrections Agency, the Department of the California  
35 Highway Patrol, district attorneys' offices, Department of Fish  
36 and Game, Department of Parks and Recreation, or the military  
37 or naval forces of this state or of the United States, or any federal  
38 law enforcement agency for use in the discharge of their official  
39 duties.

1 (f) (1) Subdivisions (b) and (c) shall not prohibit the  
2 possession or use of assault weapons or a .50 BMG rifle by  
3 sworn peace officer members of those agencies specified in  
4 subdivision (e) for law enforcement purposes, whether on or off  
5 duty.

6 (2) Subdivisions (a), (b), and (c) shall not prohibit the  
7 delivery, transfer, or sale of an assault weapon or a .50 BMG rifle  
8 to, or the possession of an assault weapon or a .50 BMG rifle by,  
9 a sworn peace officer member of an agency specified in  
10 subdivision (e), provided that the peace officer is authorized by  
11 his or her employer to possess or receive the assault weapon or  
12 the .50 BMG rifle. Required authorization is defined as verifiable  
13 written certification from the head of the agency, identifying the  
14 recipient or possessor of the assault weapon as a peace officer  
15 and authorizing him or her to receive or possess the specific  
16 assault weapon. For this exemption to apply, in the case of a  
17 peace officer who possesses or receives the assault weapon prior  
18 to January 1, 2002, the officer shall register the assault weapon  
19 pursuant to Section 12285 on or before April 1, 2002; in the case  
20 of a peace officer who possesses or receives the assault weapon  
21 on or after January 1, 2002, the officer shall register the assault  
22 weapon pursuant to Section 12285 not later than 90 days after  
23 possession or receipt. In the case of a peace officer who  
24 possesses or receives a .50 BMG rifle on or before January 1,  
25 2005, the officer shall register the .50 BMG rifle on or before  
26 April 30, 2006. In the case of a peace officer who possesses or  
27 receives a .50 BMG rifle after January 1, 2005, the officer shall  
28 register the .50 BMG rifle not later than one year after possession  
29 or receipt. The peace officer must include with the registration, a  
30 copy of the authorization required pursuant to this paragraph.

31 (3) Nothing in this section shall be construed to limit or  
32 prohibit the delivery, transfer, or sale of an assault weapon or a  
33 .50 BMG rifle to, or the possession of an assault weapon or a .50  
34 BMG rifle by, a member of a federal law enforcement agency  
35 provided that person is authorized by the employing agency to  
36 possess the assault weapon or .50 BMG rifle.

37 (g) Subdivision (b) shall not apply to the possession of an  
38 assault weapon during the 90-day period immediately after the  
39 date it was specified as an assault weapon pursuant to Section  
40 12276.5, or during the one-year period after the date it was

1 defined as an assault weapon pursuant to Section 12276.1, if all  
2 of the following are applicable:

3 (1) The person is eligible under this chapter to register the  
4 particular assault weapon.

5 (2) The person lawfully possessed the particular assault  
6 weapon prior to the date it was specified as an assault weapon  
7 pursuant to Section 12276.5, or prior to the date it was defined as  
8 an assault weapon pursuant to Section 12276.1.

9 (3) The person is otherwise in compliance with this chapter.

10 (h) Subdivisions (a), (b), and (c) shall not apply to the  
11 manufacture by persons who are issued permits pursuant to  
12 Section 12287 of assault weapons or .50 BMG rifles for sale to  
13 the following:

14 (1) Exempt entities listed in subdivision (e).

15 (2) Entities and persons who have been issued permits  
16 pursuant to Section 12286 or 12287.

17 (3) Entities outside the state who have, in effect, a federal  
18 firearms dealer's license solely for the purpose of distribution to  
19 an entity listed in paragraphs (4) to (6), inclusive.

20 (4) Federal military and law enforcement agencies.

21 (5) Law enforcement and military agencies of other states.

22 (6) Foreign governments and agencies approved by the United  
23 States State Department.

24 (i) Subdivision (a) shall not apply to a person who is the  
25 executor or administrator of an estate that includes an assault  
26 weapon or a .50 BMG rifle registered under Section 12285 or  
27 that was possessed pursuant to paragraph (1) of subdivision (f)  
28 which is disposed of as authorized by the probate court, if the  
29 disposition is otherwise permitted by this chapter.

30 (j) Subdivisions (b) and (c) shall not apply to a person who is  
31 the executor or administrator of an estate that includes an assault  
32 weapon or a .50 BMG rifle registered under Section 12285 or  
33 that was possessed pursuant to paragraph (1) of subdivision (f) if  
34 the assault weapon or .50 BMG rifle is possessed at a place set  
35 forth in paragraph (1) of subdivision (c) of Section 12285 or as  
36 authorized by the probate court.

37 (k) Subdivision (a) shall not apply to:

38 (1) A person who lawfully possesses and has registered an  
39 assault weapon or .50 BMG rifle pursuant to this chapter who

1 lends that assault weapon or .50 BMG rifle to another if all the  
2 following apply:

3 (A) The person to whom the assault weapon or .50 BMG rifle  
4 is lent is 18 years of age or over and is not in a class of persons  
5 prohibited from possessing firearms by virtue of Section 12021  
6 or 12021.1 of this code or Section 8100 or 8103 of the Welfare  
7 and Institutions Code.

8 (B) The person to whom the assault weapon or .50 BMG rifle  
9 is lent remains in the presence of the registered possessor of the  
10 assault weapon or .50 BMG rifle.

11 (C) The assault weapon or .50 BMG rifle is possessed at any  
12 of the following locations:

13 (i) While on a target range that holds a regulatory or business  
14 license for the purpose of practicing shooting at that target range.

15 (ii) While on the premises of a target range of a public or  
16 private club or organization organized for the purpose of  
17 practicing shooting at targets.

18 (iii) While attending any exhibition, display, or educational  
19 project that is about firearms and that is sponsored by, conducted  
20 under the auspices of, or approved by a law enforcement agency  
21 or a nationally or state recognized entity that fosters proficiency  
22 in, or promotes education about, firearms.

23 (2) The return of an assault weapon or .50 BMG rifle to the  
24 registered possessor, or the lawful possessor, which is lent by the  
25 same pursuant to paragraph (1).

26 (l) Subdivisions (b) and (c) shall not apply to the possession of  
27 an assault weapon or .50 BMG rifle by a person to whom an  
28 assault weapon or .50 BMG rifle is lent pursuant to subdivision  
29 (k).

30 (m) Subdivisions (a), (b), and (c) shall not apply to the  
31 possession and importation of an assault weapon or a .50 BMG  
32 rifle into this state by a nonresident if all of the following  
33 conditions are met:

34 (1) The person is attending or going directly to or coming  
35 directly from an organized competitive match or league  
36 competition that involves the use of an assault weapon or a .50  
37 BMG rifle.

38 (2) The competition or match is conducted on the premises of  
39 one of the following:

1 (A) A target range that holds a regulatory or business license  
2 for the purpose of practicing shooting at that target range.

3 (B) A target range of a public or private club or organization  
4 that is organized for the purpose of practicing shooting at targets.

5 (3) The match or competition is sponsored by, conducted  
6 under the auspices of, or approved by, a law enforcement agency  
7 or a nationally or state recognized entity that fosters proficiency  
8 in, or promotes education about, firearms.

9 (4) The assault weapon or .50 BMG rifle is transported in  
10 accordance with Section 12026.1 or 12026.2.

11 (5) The person is 18 years of age or over and is not in a class  
12 of persons prohibited from possessing firearms by virtue of  
13 Section 12021 or 12021.1 of this code or Section 8100 or 8103 of  
14 the Welfare and Institutions Code.

15 (n) Subdivisions, (b) and (c) shall not apply to any of the  
16 following persons:

17 (1) A person acting in accordance with Section 12286 or  
18 12287.

19 (2) A person who has a permit to possess an assault weapon or  
20 a .50 BMG rifle issued pursuant to Section 12286 or 12287 when  
21 he or she is acting in accordance with Section 12285, 12286, or  
22 12287.

23 (o) Subdivisions (a), (b), and (c) shall not apply to any of the  
24 following persons:

25 (1) A person acting in accordance with Section 12285.

26 (2) A person acting in accordance with Section 12286, 12287,  
27 or 12290.

28 (p) Subdivisions (b) and (c) shall not apply to the registered  
29 owner of an assault weapon or a .50 BMG rifle possessing that  
30 firearm in accordance with subdivision (c) of Section 12285.

31 (q) Subdivision (a) shall not apply to the importation into this  
32 state of an assault weapon or a .50 BMG rifle by the registered  
33 owner of that assault weapon or a .50 BMG rifle, if it is in  
34 accordance with the provisions of subdivision (c) of Section  
35 12285.

36 (r) Subdivision (a) shall not apply during the first 180 days of  
37 the 2005 calendar year to the importation into this state of a .50  
38 BMG rifle by a person who lawfully possessed that .50 BMG  
39 rifle in this state prior to January 1, 2005.

(s) Subdivision (c) shall not apply to the possession of a .50 BMG rifle that is not defined or specified as an assault weapon pursuant to this chapter, by any person prior to May 1, 2006 if all of the following are applicable:

(1) The person is eligible under this chapter to register that .50 BMG rifle.

(2) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(3) The person is otherwise in compliance with this chapter.

(t) Subdivisions (a), (b) and (c) shall not apply to the sale of assault weapons or .50 BMG rifles by persons who are issued permits pursuant to Section 12287 to any of the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Federal military and law enforcement agencies.

(4) Law enforcement and military agencies of other states.

(5) Foreign governments and agencies approved by the United States State Department.

(6) Officers described in subdivision (f) who are authorized to possess assault weapons or .50 BMG rifles pursuant to subdivision (f).

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



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